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2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT SEATTLE

6 SEATTLE TIMES COMPANY,

7 Plaintiff,

8 v.

9 LEATHERCARE, INC.; STEVEN RITT;
10 and the marital community composed of
STEVEN RITT and LAURIE ROSEN-
RITT,

11 Defendants/Third-Party
12 Plaintiffs,

13 v.

14 TOUCHSTONE SLU LLC; and
TB TS/RELP LLC,

15 Third-Party Defendants.

C15-1901 TSZ

ORDER

16 THIS MATTER comes before the Court on a motion for attorneys' fees, docket
17 no. 321, brought by Steven Ritt and the marital community composed of Steven Ritt and
18 Laurie Rosen-Ritt (collectively, "Ritt").¹ Having reviewed all papers filed in support of,
19 and in opposition to, Ritt's motion, the Court enters the following order.

20 _____
21 ¹ This motion also seeks recovery of litigation expenses, but Ritt has filed a separate motion to
22 tax costs, docket no. 323, which is pending before the Clerk of the Court. Costs are therefore not
23 addressed in this Order.

Discussion

Ritt was the prevailing party with regard to a claim brought by Seattle Times Company (“Seattle Times”) pursuant to Washington’s Model Toxics Control Act (“MTCA”). *See* Minute Order at ¶ 2(b) (docket no. 313); *see also* Order (docket no. 270); Judgment (docket no. 271). Under MTCA, the prevailing party in a lawsuit to recoup “remedial action costs” is entitled to recover “reasonable attorneys’ fees and costs.” RCW 70.105D.080. The fee applicant bears the burden of proving the reasonableness of the amount requested. *Scott Fetzer Co. v. Weeks*, 122 Wn.2d 141, 151, 859 P.2d 1210 (1993). Under Washington law, which governs the determination of reasonable attorneys’ fees in this case, the lodestar method applies. *See Brand v. Dep’t of Labor & Indus.*, 139 Wn.2d 659, 666, 989 P.2d 1111 (1999).

The lodestar method involves two steps: first, computing a lodestar amount by multiplying a reasonable hourly rate by the number of hours reasonably expended on the matter; and second, adjusting the lodestar figure either up or down to reflect factors that have not already been taken into account, for example, the contingent nature of success and the quality of the work performed. *See id.*; *see also Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 593-99, 675 P.2d 193 (1983) (quoting *Miles v. Sampson*, 675 F.2d 5, 8 (1st Cir. 1982), and citing *Copeland v. Marshall*, 641 F.2d 880 (D.C. Cir. 1980)). The Court is not bound by the lodestar value, but rather, is charged with making “an independent decision” as to what represents a reasonable amount of attorneys’ fees. *Nordstrom, Inc. v. Tampourlos*, 107 Wn.2d 735, 744, 733 P.2d 208 (1987). With regard

1 to reasonableness, an attorney's billing records, although relevant, are "in no way
2 dispositive." *Id.*

3 Ritt has requested \$807,613.00 in attorneys' fees, arguing that the time spent on
4 defending LeatherCare, Inc. ("LeatherCare"), which was also sued by Seattle Times, and
5 which was represented by the same attorneys as Ritt, cannot be segregated from the
6 efforts devoted to Ritt's defense. The Court disagrees. The Court will award 100% of
7 the attorneys' fees associated with (i) the billing entries of Jo M. Flannery and Kristin
8 Nealey Meier² that mention Ritt, and (ii) Flannery's and Meier's services in successfully
9 opposing the motion filed by Seattle Times in June 2017 seeking summary judgment
10 concerning Ritt's liability. With regard to the remainder of Flannery's and Meier's fees,
11 the Court will use a 10% multiplier of the lodestar amount, which reflects a reasonable
12 apportionment between work performed for Ritt and their representation of LeatherCare.

13 Ritt's personal liability was not a primary issue in this litigation. Rather, on behalf
14 of both Ritt and LeatherCare, Flannery and Meier focused most of their energy on the
15 unsuccessful argument that recovery under MTCA for excavation-related expenses
16 should be limited to the percentage (allegedly 22%) of soil that had concentrations of
17

18
19 ² Ritt has asked for attorneys' fees related to work performed by individuals as to whom no
20 biographical information has been provided. The Court cannot assess whether the hourly rates
21 sought for such lawyers' services are consistent with the usual rates in the local legal community
22 for comparable work, and the Court therefore declines to award any attorneys' fees associated
23 with the billings of Kari Brotherton, Madison M. Burke, Madeline S. Davis, Bryan C. Graff,
Richard Hyatt, Roger Kindley, Shannon Lawless, Teru Scott Olsen, John Petrie, and Clifton
Stratton. The Court made a similar ruling in connection with the motion for attorneys' fees
brought by Touchstone SLU LLC and TB TS/RELP LLC. *See* Order at 4 (docket no. 328).

1 perchloroethylene (“PCE”) above the “cleanup” level published by Washington’s
2 Department of Ecology (0.05 mg PCE per kg soil). See Order at 105-07 (docket no. 270).
3 They also lobbied to no avail for parties other than Ritt and LeatherCare to be equitably
4 allocated a majority (60% or more) of the responsibility for the remedial action costs at
5 issue. See Trial Br. at 27 (docket no. 131). Ritt is not entitled to attorneys’ fees or
6 litigation expenses, including expert witness fees, incurred to advance theories on which
7 neither Ritt nor LeatherCare prevailed.

8 In concluding that Ritt is entitled to 10% of the lodestar figure for Flannery’s and
9 Meier’s general billings, the Court has considered the declaration of Peter Hsiao, an
10 expert for Seattle Times, who opined that the appropriate amount of reduction for entries
11 encompassing recoverable and non-recoverable time is 85%. See Hsiao Decl. at ¶¶ 6 &
12 20 (docket no. 326). Because the Court has awarded 100% of the fees related to
13 Flannery’s and Meier’s “Ritt” specific work, the Court will allow 10%, rather than 15%,
14 of their remaining billings. The 10% figure also reflects the proportion of the discussion
15 section of the Court’s Order entered August 15, 2018, docket no. 270, that was devoted to
16 analyzing whether Ritt qualified as an “operator” under MTCA (roughly 5.5 of the 56
17 pages).

18 The Court will use the same multiplier (10%) with respect to paralegal billings,
19 which adequately accounts for the segregable nature of the issues on which Ritt
20 prevailed, as well as any work that was clerical, as opposed to legal, in nature. The Court
21 declines to adopt the suggestion of Seattle Times to further reduce the lodestar figure to
22 compensate for block-billing practices.

1 Flannery has represented that both she and Meier billed at the reduced rate of
2 \$300 per hour for this matter. Flannery Decl. at ¶¶ 6 & 7 (docket no. 322). The billing
3 entries submitted in support of the motion for attorneys' fees, however, show rates for
4 Flannery's and Meier's services ranging from \$260 to \$380 per hour, with the prevalent
5 rates being \$300 or \$320 per hour. See id. at Ex. B (docket no. 322-2). Seattle Times has
6 not challenged the hourly rates requested for Flannery's and Meier's services, and the
7 Court finds that rates ranging from \$260 to \$380 per hour are reasonable.

8 Flannery has also indicated that paralegals billed at reduced rates in this matter.
9 See id. at ¶ 10. The proffered billing entries reflect rates ranging from \$115 to \$170 per
10 hour. See id. at Ex. B. Seattle Times contends that all paralegal time should be deducted
11 because biographical information was not provided for any paralegal, but it has not
12 separately argued that the requested rates are unreasonable. The Court concludes that
13 Flannery's description of the paralegals as having "a minimum of 10 years of experience
14 in the field," id. at ¶ 10, is sufficient to support the hourly rates at issue, which the Court
15 finds reasonable and consistent with the typical rates in the local legal community for
16 paralegals with equivalent experience.

17 **Conclusion**

18 For the foregoing reasons, the Court ORDERS as follows:

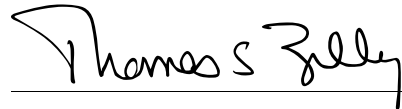
19 (1) Ritt's motion for attorneys' fees, docket no. 321, is STRICKEN in part (as
20 to costs and/or litigation expenses) without prejudice, GRANTED in part, and DENIED
21 in part.

(2) Ritt is AWARDED reasonable attorneys' fees as follows:

Description	Requested	Awarded
Flannery and Meier ("Ritt" specific work)	\$42,696.00	\$42,696.00
Flannery and Meier (apportioned 10%)	\$676,658.00	\$67,665.80
Paralegal (apportioned 10%)	\$71,268.00	\$7,126.80
Other Attorneys	\$29,293.00	\$0.00
TOTAL	\$819,915.00	\$117,488.60

(3) The Clerk is DIRECTED to enter supplemental judgment consistent with this Order and the Order entered March 1, 2019, docket no. 328, and to send a copy of this Order and the Supplemental Judgment to all counsel of record.

DATED this 17th day of April, 2019.



Thomas S. Zilly
United States District Judge